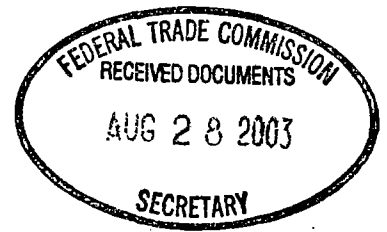


UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION



In the Matter of  
  
UNION OIL COMPANY OF CALIFORNIA,  
a corporation.

Docket No. 9305

**COMPLAINT COUNSEL'S RESPONSES AND OBJECTIONS TO RESPONDENT'S  
SECOND SET OF REQUESTS FOR ADMISSIONS**

Pursuant to Section 3.32 of the Federal Trade Commission's Rules of Practice and the Scheduling Order in this matter, Complaint Counsel hereby responds to Respondent Union Oil Company of California's ("Unocal's") Second Set of Requests for Admissions. Complaint Counsel reiterates its previously filed objectives below. Subject to, and without waiving these objections, Complaint Counsel hereby responds as follows.

Request for Admission No. 1:

The conduct of Unocal as alleged in the Complaint has increased incentives to innovate in the field of low-emissions, reformulated gasoline in California.

Response to Request for Admission No.1:

Denied.

Request for Admission No. 2:

Even with the alleged increased royalties and higher prices for reformulated gasoline, as alleged in Paragraph 8 of the Complaint, CARB Phase 2- compliant California RFG is both cleaner-burning and cheaper than methanol.

Response to Request for Admission No. 2:

Denied.

Request for Admission No. 3:

Information that constitutes "data" related to Unocal's RFG research and

“equations” that were derived from analysis of the data are two distinct bodies of knowledge.

Response to Request for Admission No. 3:

Denied.

Request for Admission No. 4:

Unocal urged CARB not to adopt the Phase 2 RFG regulations that CARB ultimately adopted.

Response to Request for Admission No. 4:

Complaint Counsel admits that on occasion, Unocal criticized certain components of the Phase II regulation and agreed with many of the components of the regulation as well. To the extent that this Request purports to mean anything in addition to this fact, it is denied.

Request for Admission No. 5:

After CARB adopted its Phase 2 regulations, Unocal urged CARB to delay the adoption of these regulations.

Response to Request for Admission No. 5:

Denied.

Request for Admission No. 6:

If CARB had adopted the regulatory approach advocated by Unocal during CARB’s Phase 2 rulemaking, the resulting regulations would not have “substantially overlapped with Unocal’s” patent claims.

Response to Request for Admission No. 6:

Denied.

Request for Admission No. 7:

If CARB had adopted the regulatory approach advocated by Unocal during CARB’s Phase 2 rulemaking, the resulting regulations would not have conferred any competitive advantage on Unocal.

Response to Request for Admission No. 7:

Denied.

Request for Admission No. 8:

CARB never asked any participant in the CARB Phase 2 proceedings, including Unocal, to disclose any patents or patent applications that might be impacted by the CARB Phase 2 regulations.

Response to Request for Admission No. 8:

Complaint Counsel admits that no participant to the Phase 2 rulemaking was asked to disclose any pending patent applications as a condition of participation, but avers that CARB expected that Unocal would disclose material information including the existence of proprietary rights associated with patents or patent applications and an intention to enforce these rights, which would thereby impact the costs associated with the regulations. To the extent that this Request purports to mean anything in addition to this fact, it is denied.

Request for Admission No. 9:

No participant in the CARB Phase 2 proceedings made any public disclosure of any patents or patent applications that might be impacted by the CARB Phase 2 regulations.

Response to Request for Admission No. 9:

Denied.

Request for Admission No. 10:

Following Unocal's submission to CARB of the document produced by CARB as CARB-FTC0060507, CARB did not seek any information from Unocal regarding any patent application that it may have and proceeded to complete its rulemaking by enacting a regulation.

Response to Request for Admission No.10:

Complaint Counsel admits that CARB received the document produced by CARB as CARB-FTC0060507, which reflects that Unocal disclosed to CARB during a rulemaking in 1989 that it had a "patent pending formulation" for gasoline additives. Complaint Counsel further admits that CARB completed a regulation relating to gasoline additives. Complaint Counsel further admits that CARB did not seek information regarding the patent application but avers that the existence of proprietary interests in gasoline additives was understood by CARB as it completed the rulemaking relating to gasoline additives.

Request for Admission No.11:

CARB has never asked any participant in a rulemaking to disclose whether or not

it possesses any patents or patent applications that may relate to the subject matter of the rulemaking.

Response to Request for Admission No.11:

Complaint Counsel admits that, at this time, it is aware of no instance where CARB has explicitly asked any participant in a rulemaking to disclose whether or not it possesses any patents or patent applications that may relate to the subject matter of the rulemaking as a condition of participation, but avers that CARB expects participants to disclose information material to a rulemaking. This material information may include, without limitation, the existence of proprietary rights associated with patents or patent applications and an intention to enforce these rights, which would thereby impact the costs associated with the regulations.

Request for Admission No.12:

As of the time of the completion of CARB's Phase 2 RFG rulemaking, CARB has never asked any participant in a rulemaking to disclose whether it possesses any patents or patent application that may relate to the subject matter of the rulemaking.

Response to Request for Admission No.12:

Complaint Counsel admits that, at this time, it is aware of no instance where CARB has explicitly asked any participant in a rulemaking to disclose whether or not it possesses any patents or patent applications that may relate to the subject matter of the rulemaking as a condition of participation, but avers that CARB expects participants to disclose information material to a rulemaking. This information may include, without limitation, the existence of proprietary rights associated with patents or patent applications and an intention to enforce these rights, which would thereby impact the costs associated with the regulations.

Request for Admission No.13:

Refiners appearing before CARB regularly designate submissions of confidential information to CARB with a notice that refers to the information as "proprietary."

Response to Request for Admission No.13:

Denied.

Request for Admission No.14:

No standard-setting organization in which members of the petroleum industry participated requires participants to disclose their ownership of patent applications.

Response to Request for Admission No.14:

Denied.

Request for Admission No.15:

As of the time of the completion of CARB's Phase 2 rulemaking, no standard-setting organization in which members of the petroleum industry participated required participants to disclose their ownership of patent applications.

Response to Request for Admission No.15:

Denied.

Request for Admission No.16:

CARB employees met with representatives of other companies and organizations in connection with its Phase 2 RFG rulemakings, both before and after the issuance of Notices of Proposed Rulemakings, in both private and public forums to receive views on policy issues.

Response to Request for Admission No.16:

Complaint Counsel admits that CARB employees had public and private meetings with participants to the Phase 2 rulemaking relating to the practicality and scientific and technical merits of the proposed regulations. To the extent that this Request purports to mean anything in addition to this fact, it is denied.

Request for Admission No.17:

CARB never communicated to participants in any RFG rulemaking that it was engaged in a "fact-finding."

Response to Request for Admission No.17:

Denied.

Request for Admission No.18:

CARB never made any determination that it designated as findings of fact in connection with any RFG rulemaking.

Response to Request for Admission No.18:

Denied.

**OBJECTIONS**

1. Complaint Counsel generally objects to the characterization of this document as the “First Set of Requests for Admissions” on the grounds that Unocal previously issued a “First Set of Requests for Admissions.” Complaint Counsel will refer to this most recent set as the Second Set of Requests for Admission.
2. Complaint Counsel generally objects to the Definitions and Instructions to the Second Set of Requests for Admissions on the grounds that they are instructions that are applicable to interrogatories and not requests for admission, refer to interrogatories that are not contained in the document, and contain no references to requests for admission.
3. Complaint Counsel generally objects to the Second Set of Requests for Admissions on the grounds that it seeks information from Complaint Counsel that is directly available from non-parties. Complaint Counsel will answer these requests for admissions based on the information available, but reserves the right to amend or supplement based upon production of information from individuals and entities with direct knowledge of these subject matters.
4. Complaint Counsel generally objects to Definition Number 4 which defines “FTC to mean “the Federal Trade Commission and any bureau, division, office or subpart thereof.” Complaint Counsel also generally objections to Definition Number 3 which defines “you” to

include the “FTC or any of its present or former employees, agents, and all other employees purporting to act on its behalf.” The FTC Rules of Practice provide that discovery is not permitted for information in the possession of the Commission, the General Counsel, the Office of Administrative Law Judges and the Secretary (in his capacity as a custodian or recorder of any such information) or their respective staffs.

5. Complaint Counsel generally objects to Definition Number 6 which is ambiguous. Complaint Counsel interprets “CARB,” not “CARS,” to be the “California Air Resources Board.”

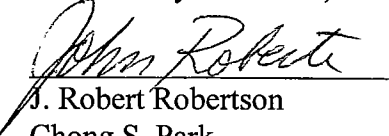
6. Complaint Counsel generally objects to Instruction Number 5, which requires that “the person or persons who provide information in answers to the interrogatories will identify which answers have been provided and furnish his or her name, address and title” on the grounds that all of the information was supplied by persons not under the control of the Federal Trade Commission and/or is subject to the work product privilege. All non-privileged information responsive to these interrogatories was gathered from Unocal and/or non-parties during the Part II investigation and the Part III discovery process.

7. Complaint Counsel’s discovery and investigation in this matter are continuing. Complaint Counsel reserves the right to assert additional objections to Respondent’s Second Set of Requests for Admission, and to amend or supplement this objections and its responses as necessary.

8. Complaint Counsel objects to each request for admission to the extent that the request for admission is vague, ambiguous or unintelligible. Notwithstanding this objections, Complaint Counsel will answer based on its best effort to interpret this interrogatory.

9. Complaint Counsel objects to each request for admission to the extent that the response to the request for admission would require the production of information covered by the attorney-client or deliberative process privilege, or the work product doctrine.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "John Robert Robertson", is written over a horizontal line.

J. Robert Robertson

Chong S. Park

John Roberti

Peggy D. Bayer

*Counsel Supporting the Complaint*

Bureau of Competition  
Federal Trade Commission  
Washington, D.C. 20580  
(202) 326-2372  
Facsimile (202) 326-3496

Dated: August 28, 2003



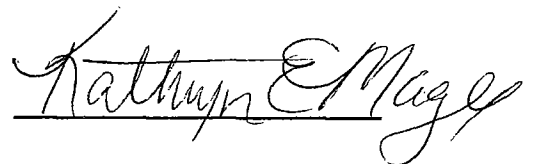
## CERTIFICATE OF SERVICE

This is to certify that on August 28, 2003, I caused the following to be served on the individuals listed below: *Complaint Counsel's Responses and Objections to Respondent's Second Set of Requests for Admission.*

The Honorable D. Michael Chappell (by HAND)  
Administrative Law Judge  
The Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

David W. Beehler, Esq. (by FAX & FEDEX)  
Robins, Kaplan, Miller & Ciresi LLP  
2800 La Salle Plaza  
800 LaSalle Avenue  
Minneapolis, MN 55402-2015

Joe Kattan, Esq. (By FAX & FEDEX)  
Gibson, Dunn, & Crutcher LLP  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036-5306

A handwritten signature in cursive script, reading "Kathryn E. Magee". The signature is written in dark ink and is positioned above the printed name.

Kathryn E. Magee